

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: JOEL THYS and THYS CHEVROLET, INC. Benton County, Iowa	ADMINISTRATIVE ORDER NO. 2014-AQ- 27 NO. 2014-SW- 16
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TO: Joel Thys
2015 78th Street
Blairstown, Iowa 52209

Thys Chevrolet, Inc.
Joel Thys
1002 S. County Road
Toledo, Iowa 52312

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order. Questions regarding this Order should be directed to:

Relating to technical requirements:

Rick Martens, Field Office #1
Iowa Department of Natural Resources
909 West Main Street, Suite 4
Manchester, Iowa 52057
Phone : 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone : 515/725-9572

Appeal, if any, addressed to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Payment of Penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307 which authorizes the Director to issue any order to secure compliance with or prevent a violation of the provisions of Division IV, part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109

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and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this Order.

III. STATEMENT OF FACTS

1. Thys Chevrolet, Inc. (Thys Chevrolet) is a car dealership located at 601 Locust Street NW in Blainstown, Iowa. The Benton County Assessor's Office lists Joel Thys as the deed holder of the property.

2. On July 28, 2014, Marcus Greenlee, the Benton County Sanitarian, was notified through anonymous complaint that the old Chevrolet garage in Blainstown, Iowa was recently demolished and the debris had been taken to a location approximately one mile north of town (Section 13, Leroy Township, Benton County). Mr. Greenlee contacted DNR Field Office 1 regarding the complaint. Mr. Greenlee contacted the field office once again about an hour later stating he was at the disposal site and the demolition debris was being burned.

3. On July 28, 2014, Rick Martens, DNR Field Office 1 environmental specialist, travelled to the disposal site following the conversations with Mr. Greenlee. Mr. Martens observed a portion of the demolition debris and a small fire in a mowed area adjacent to the southeast corner of the Titan Machinery facility. Mr. Martens visited the Titan Machinery office and was told that Joel Thys owns the site where the burning was occurring. Mr. Martens then visited Thys Chevrolet in Blainstown and was told that Mr. Thys was not available. Mr. Martens contacted Mr. Thys via telephone and told him to immediately stop the burning. Mr. Thys gave Mr. Martens permission to enter the disposal site. Mr. Martens returned to the disposal site and took photographs of the area.

4. On July 29, 2014, Mr. Martens met with Mr. Thys at Thys Chevrolet in Blainstown. Mr. Thys explained that on the previous Sunday (July 27) he and some family members demolished the dealership's former office. Mr. Thys described the office as a 50 x 70 foot building built in 1920. The roof was a metal/tin style roof with a tar underlayment. Mr. Thys stated that five loads of fiberglass insulation, ceiling tile, and interior items were taken to the Benton County Landfill and thirty dump truck loads of debris, including 300 square feet of carpeting, tile flooring, brick, wood, and all the roofing material and other demolition wastes were taken to the property in Section 13, Leroy Township and burned. The copper wiring and other salvageable metals were removed prior to the burning. Mr. Thys stated the burning took place on July 27 and that he was not aware of the open burning regulations. He stated that there was no asbestos inspection conducted prior to the demolition and no demolition notification was submitted to the DNR. Mr. Thys was provided a Report of Investigation and issued a Notice of Violation for the open burning and solid waste disposal violations. Mr. Thys was required to dispose of the remaining solid waste at a permitted landfill by August 15, 2014.

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5. On July 29, 2014, Mr. Martens visited the Benton County Landfill and met with Pam Gorsch, the operator. Ms. Gorsch stated she was aware of the demolition and confirmed that Mr. Thys delivered five loads of solid waste, ranging from five to ten tons per load. She stated that the disposal cost of demolition and construction waste is \$60/ton and that the landfill does not accept friable asbestos material.

6. On August 3, 2014, Mr. Thys submitted the landfill receipts for the disposal of the remaining solid waste. The landfill fee for the remaining solid waste was \$1,872.00.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Thys confirmed that the debris from the demolished office was burned. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the old office building. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(b)(1) requires written notification to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has no evidence that a notification was ever submitted prior to the demolition of the old office building. The above facts indicate a violation of this provision.

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6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

7. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Mr. Thys confirmed that the debris from the demolished office was burned rather than disposed of at a regulated landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered that Mr. Thys and Thys Chevrolet do the following:

1. Pay an administrative penalty of \$10,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII of this Order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a \$10,000.00 penalty. Joel Thys and Thys Chevrolet are jointly and severally liable for the penalty. The administrative penalty assessed by this administrative order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Mr. Thys stated that he took thirty loads of demolition debris to the property in Section 13, Leroy Township and burned the debris. Previous loads taken to the landfill were estimated to range from five to ten tons per load. The landfill disposal cost was \$60.00 per ton. Based on

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this information Mr. Thys' avoided landfill fees are estimated to be \$9,000.00 to \$18,000.00. Mr. Thys did take the remaining debris that was not burned to the landfill following the inspection for a fee of \$1,872.00; therefore the avoided landfill fees are minimally reduced. Additionally, Mr. Thys gained an economic benefit by failing to have the building inspected for asbestos prior to the demolition. The cost of inspection and asbestos testing for the building ranges from \$1,000.00 to \$2,000.00. Based on the above-mentioned estimates, a reasonable estimated economic benefit is between \$10,000.00 and \$20,000.00. However, in light of the Gravity and Culpability factors below, \$7,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The open burning and improper solid waste disposal may adversely impact the health of the citizens in the area surrounding the burn site. Additionally, asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition. These violations threaten the integrity of the regulatory program because compliance with the asbestos, open burning and solid waste regulations is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Mr. Thys has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 567 IAC 7.4(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

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VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 1st day of
December, 2014.

AQB (Con 10-6 Benton County); Kelli Book; Field Office 1; EPA; VI.C, VII.C.1 and VII.C.4